

## Format-Assembled Exchange Ledger Report

State:

Date:

Exchange Serial Number	Exchange Name	Exchange Propone nt	Current Ledger Imbalan ce Amount	Favori ng Bureau	Favorin g Propone nt	Not Secure d	Secure d	Form of Securi ty (i.e. cash bond, corp. surety )

(check where appropriate)

## **Guidelines for Determining the Need for Establishing Ledgers**

In determining the need to establish a ledger under the terms of an assembled land exchange agreement, State Directors should assure that proper consideration has been given to equalizing the exchange transaction with adjustment of acres before allowing for an imbalance to be reflected on a ledger. Where imbalances are justified, a written statement supporting that justification should accompany each entry to the ledger. The supporting statement should also address actions which have been taken to minimize the duration of the period over which there is an imbalance (43 C.F.R. 2201.6).

The determination regarding the initial need to secure ledger imbalances as part of an assembled land exchange must be made by the State Director, who must also review and update this determination with the completion of each transaction conducted under the assembled land exchange. The determination should be made in writing and included as a part of the official case record.

In making the determination of the need to secure the ledger imbalance, at a minimum, the following factors should be considered.

### Imbalances in favor of United States:

- 1) Anticipated amount of value and time the imbalance is expected to remain in effect before a subsequent exchange transaction is projected to occur and the effect of that transaction on the imbalance.
- 2) The expected ratio of time the imbalance will favor the Bureau vs the proponent over the life of the ledger/exchange.
- 3) The ability of the exchange proponent to equalize the exchange with cash should the exchange unexpectedly need to be terminated. This factor should include consideration of the relative financial stability of the proponent as it relates to protecting the public interest in the need to secure an imbalance.
- 4) The number of assembled exchange agreements or ledgers that exist with the same proponent within the state.
- 5) The amount of exchange workload the proponent is handling without compensation, reflecting the proponents investment in ensuring timely completion of the exchange package.
- 6) Existence of a binding exchange agreement securing commitments to complete the exchange.

7) The nature of the real estate market and the potential that the imbalance could provide windfall benefits to proponents in rapidly appreciating markets.

Imbalances in favor of exchange proponents:

1) Under no circumstances does the United States financially secure imbalances due proponents under assembled land exchange ledger agreements. State Directors should use caution in approving imbalances in favor of proponents as there are a number of factors that may limit the ability of the Bureau to provide suitable land or cash to equalize assembled land exchanges.

2) Factors that may support ledger imbalances in favor of proponents.

- availability of LWCF or other funds that could be utilized to equalize ledger imbalances,
- availability of exchange base and capability of resources to rapidly pursue utilization of additional lands to equalize a ledger imbalance,
- willingness of the proponent to waive equalization or consider donations under the authority of Section 307 of FLPMA.

## **Securing Ledger Imbalances**

If a determination has been made that a ledger imbalance is necessary and the imbalance needs to be secured, one of the following approved methods must be utilized. No other approach or variation for securing ledger imbalances will be authorized. Funds will not be retained in an escrow account as a means of securing a ledger imbalance.

### **Approved Performance Bonding Options**

#### **What is a Performance Bond?**

In general, a performance bond is similar to an insurance policy obtained by the exchange proponent and offered to the Bureau as a guarantee of acceptable performance for equalizing imbalances on an assembled land exchange. The bond security may be in the form of cash or negotiable Treasury notes, bills, or bonds, which are controlled by the proponent and offered directly to the authorized officer. More often the bonding agreement is secured by the guarantee of surety company who agrees to be liable for the proponent's performance. In all cases the bond must consist of a bonding document and some form of security. The originally executed documents should be retained by the Bureau in a State Office file and should reference the location of the file, or a copy of the bond should be kept in the case file.

#### **Acceptable Types of Performance Bonds**

The following guidelines must be adhered to when accepting security for bonds:

- (1) The funds must be guaranteed and negotiable at full value by the Government.
- (2) The funds must be accessible to the Government at all times.
- (3) The funds must not be available to the proponent without a release from the Government.

Securities in the form of stocks, certificates of deposits, and bank accounts from which the proponent can withdraw funds are not acceptable forms of bond security.

The acceptable forms of bond security are cash or personal bond, negotiable U.S. Treasury bonds, notes, or bills and a bond of corporate surety.

(1) **Cash bonds or personal bonds**: these bonds are secured by cash or a cash equivalent payable to the Bureau. The cash received must be equal to the required bond value and deposited and retained by the Bureau until the bond is terminated or if default has occurred. The bond form (2800-17-(a)) and power of attorney if a separate document, must be originally executed by the proponent and witnessed. The cash is then deposited into deposit account 14X6500.

**(2) Negotiable U.S. Treasury Bonds, Notes, or Bills (known as Book Entry Deposits):**

applicants may furnish Treasury notes , bills, or bonds in the form of book entry deposits from a financial institution (referred to as a bank) to whichever Federal Reserve Bank services their account. Any charges levied by the Federal Reserve Bank or Treasury Department must be paid by the proponent. The necessary steps to arrange for security in the form of book entry deposits are as follows:

(a) Instruct the proponent requiring the bond to contact a commercial bank and request that they pledge a book entry deposit for a Treasury bond, note, or bill in the name of the Department of the Interior, Bureau of Land Management, in the amount required. They should contact Dorothy Butler, BLM's Negotiable Security Manager, at (303)236-6332, if they have any questions.

(b) The proponents must then complete a power of attorney form which authorizes the Bureau to use the funds in case of default on the equalization of the imbalance.

**The proponents must furnish the information listed below:**

- (1) Name and address of proponent
- (2) Social Security or Taxpayer ID number of the proponent.
- (3) Serial number of the exchange
- (4) The type of security purchased (bond, note, or bill)
- (5) The par amount of the security (\$25,000; \$50,000, etc.)
- (6) The maturity date of the security
- (7) The CUSIP number of the security
- (8) The name of the depository financial institution
- (9) The mailing address of the depository financial institution
- (10) The depository financial institution's nine digit ABA number
- (11) The name of the Federal Reserve Bank servicing the depository financial institution

If the depository financial institution uses a correspondent financial institution to hold Treasury securities, the information requested in lines 4 through 11 above must be provided for the correspondent financial institution.

When the power of attorney is completed, and BLM is advised that the book entry deposit has been made, contact Dorothy Butler at the Business Center (BC-621) and provide the information requested above.

Follow the call with a confirmation memorandum.

The BC will get a document evidencing the deposit and identifying the security. A separate case file will be created for each security. The submitting office will be notified upon receipt of the deposit advice.

**(3) Bond of Corporate Security:** the surety company must be approved by the U.S. Treasury to underwrite Federal bonds. The bond form must be affixed with the seal of the surety company and accompanied by a power of attorney from the surety company for its agent. The proponent must be provided with a copy of the Agreement to Initiate and the ledger imbalance provisions to present to the surety company prior to the instrument's issuance.

**Release of a Bond:**

A bond may be released only when it has been determined that title to non-federal land has been accepted and the ledger imbalance has been reduced or eliminated.

**Release of a Cash Bond:**

Upon the termination of a cash bond the proponent should be sent the power of attorney which was made payable to BLM, and a letter acknowledging release of liability under the bond. By reference to the original accounting advice, the State Office requests that a refund be processed to the proponent.

**Release of a Treasury Security:**

Upon the termination of a Treasury bond, the State Office should notify the BC on the release of liability so they can effect the return of the Treasury security to the proponent.

**Release of Corporate Surety Bond:**

The authorized officer must notify the surety company that the proponent has fulfilled their obligations and requests cancellation of the surety company liability.

**Redeeming Bonds for Failure with Agreements:**

When it is determined that the proponent has failed to meet the terms of the agreement to equalize the imbalance, action should be taken to protect the Bureau's interests. The proponent should be

notified by certified mail, with a copy to the surety company, if applicable, of the impending default and given a reasonable period of time in which to take corrective action. If the default is not cleared to the Bureau's satisfaction, action should be taken to remedy it by collecting the bond security to cover the expenses of the corrective action and the money owed for equalization. When the bond is placed through a surety company, the Bureau will request payment by detailing the nature of the default. Bonds secured by cash can be recovered by transferring the cash from the suspense account to the appropriate subactivity. When bonds are secured by Treasury securities, the BC is requested to obtain the proceeds from such securities and deposit the money into the appropriate subactivity

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

**LAND EXCHANGE PERSONAL BOND, CASH AND BOOK ENTRY DEPOSITS**

Land Exchange Serial Number \_\_\_\_\_

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**KNOW ALL MEN BY THESE PRESENTS**, that \_\_\_\_\_ herein referred to as holder, is held and firmly bound unto the United States of America in the sum of dollars (\$) \_\_\_\_\_ ) lawful money the United States in the form of a cash bond (including a book entry deposit), for the payment of which, well and truly to be made, holder does hereby bind himself, his heirs, executors, administrators, successors, or assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, If the said holder or his heirs, executors, administrators, successors or assigns, shall fully comply with the said terms and conditions then, and in that event, the obligation shall be null and void; otherwise it shall remain in full force and effect.

The holder does hereby appoint the Secretary of the Interior as his attorney, for him and in his name to collect or transfer the said bond above described pursuant to authority conferred by Section I of the Act of July 30, 1947 (61 Stat. 646; 6 U.S. C. 15) to

ensure the faithful performance of any and all terms, conditions and stipulations as set out in the Land Exchange Agreement to Initiate and it is agreed that, in case of any failure in the performance of the terms, the said attorney shall have full power to collect said bond or any part thereof. The interest, if any, accruing upon said bond as above stated, in the absence of any default in the performance of any of the terms, conditions or stipulations of the bond, shall belong to the holder. The holder hereby for himself, his heirs, executors, administrators, and successors, ratifies and confirms whatever his said attorney shall do by virtue of these presents.

IN WITNESS WHEREOF, we hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Signature of Holder)

SIGNATURES OF WITNESSES

ADDRESSES OF WITNESSES

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Two witnesses, with the post office address of each, are required to each signature. The seal of each corporation signing the bond must be affixed.

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